

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 2019-185-E

South Carolina Energy Freedom)
Act (H.3659) Proceeding to)
Establish Duke Energy)
Carolinas, LLC's)
Standard Offer, Avoided Cost)
Methodologies, Form Contract)
Power Purchase Agreements,)
Commitment to Sell Forms,)
and Any Other Terms or)
Conditions Necessary)
(Includes Small Power Producers)
as Defined in 16 United States)
Code 796, as Amended) - S.C. Code)
Ann. Section 58-41-20(A))

**SOUTH CAROLINA SOLAR
BUSINESS ALLIANCE, INC.'S
MOTION IN LIMINE TO EXCLUDE
WINTERMANTEL DEC/DEP
REBUTTAL EXHIBIT 1**

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 2019-186-E

South Carolina Energy Freedom)
Act (H.3659) Proceeding to)
Establish Duke Energy)
Progress, LLC's)
Standard Offer, Avoided Cost)
Methodologies, Form Contract)
Power Purchase Agreements,)
Commitment to Sell Forms,)
and Any Other Terms or)
Conditions Necessary)
(Includes Small Power Producers)
as Defined in 16 United States)
Code 796, as Amended) - S.C. Code)
Ann. Section 58-41-20(A))

**SOUTH CAROLINA SOLAR
BUSINESS ALLIANCE, INC.'S
MOTION IN LIMINE TO EXCLUDE
WINTERMANTEL DEC/DEP
REBUTTAL EXHIBIT 1**

Pursuant to Commission Regulation 103.849, Intervenor South Carolina Solar Business Alliance, Inc. hereby objects and moves, *in limine*, to exclude Wintermantel DEC/DEP Exhibit 1 from entry into the record at the hearing in these dockets. As grounds for this motion, SBA states:

1. On or about October 2, 2019, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively “Duke”) submitted pre-filed rebuttal testimony on behalf of Nick Wintermantel and exhibits attached to that testimony.

2. Exhibit 1 to Mr. Wintermantel’s rebuttal testimony consists of written testimony prepared by Jeff Thomas that was filed on June 21, 2019 in Docket No. E-100, Sub 158 before the North Carolina Utilities Commission, which is captioned “Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2018.”

3. According to the testimony, Mr. Thomas is an engineer with the Electric Division of the Public Staff of the North Carolina Utilities Commission.

4. On October 8, 2019, counsel for SBA contacted counsel for Duke and asked that Exhibit 1 to the rebuttal testimony of Mr. Wintermantel’s be withdrawn.

5. The following day, October 9, 2019, Duke’s counsel declined SBA’s request.

6. The testimony of Mr. Thomas should not be admitted into the record because Mr. Thomas has not been identified as a witness in these dockets, Mr. Thomas is not scheduled to appear at the hearing for these dockets and as a result, Mr. Thomas cannot be examined orally, cannot be sworn in, cannot affirm his written testimony, and will not be available for cross-examination by the parties or for questions from the Commission, as required by Commission Regulation 103.845.

7. Commission Regulation 103.845 provides that witnesses shall be examined orally and that witness presenting testimony “shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.”

8. Duke has not identified Mr. Thomas as a witness in this case and Mr. Thomas is not expected to appear in person at the hearing. As such, Mr. Thomas cannot be sworn or provide any affirmation.

9. Likewise, if Mr. Thomas does not appear at the hearing, the parties will have no opportunity to cross-examine him and the Commission will not have an opportunity to question him.

10. Under these circumstances, it is clear that Mr. Thomas’ testimony standing alone would not be deemed evidence in this proceeding. Duke should not be permitted to circumvent that outcome by attaching Mr. Thomas’ testimony as an Exhibit to the pre-filed rebuttal testimony of Mr. Wintermantel, who is expected to be present at the hearing.

11. Additionally, Mr. Thomas’ testimony constitutes inadmissible hearsay under Rules 802 of the South Carolina Rules of Evidence and no exception to the hearsay rule applies that would justify its admission as evidence in this matter.

WHEREFORE, SBA respectfully asks that the Commission exclude Wintermantel DEC/DEP Exhibit 1 from entry into the record at the hearing in these dockets for the reasons set forth above.

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October 17, 2019

Columbia, South Carolina

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 2019-185-E

DOCKET NO. 2019-186-E

In the Matter of:)
)
 South Carolina Energy Freedom Act)
 (H.3659) Proceeding to Establish Each)
 Electrical Utility's Standard Offer,)
 Avoided Cost Methodologies, Form)
 Contract Power Purchase Agreements,)
 Commitment to Sell Forms, and Any)
 Other Terms or Conditions Necessary)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one copy of **SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, INC.'S MOTION IN LIMINE TO EXCLUDE WINTERMANTEL DEC/DEP REBUTTAL EXHIBIT 1** to the persons named below at the addresses set forth via electronic mail:

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/s/ Jeremy C. Hodges

 Jeremy C. Hodges

Columbia, SC
 October 17, 2019